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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,170	07/01/2003	Vahid C. Saadat	USGINZ02111	5203
40518	7590	11/21/2007	EXAMINER	
LEVINE BAGADE HAN LLP 2483 EAST BAYSHORE ROAD, SUITE 100 PALO ALTO, CA 94303			MENDOZA, MICHAEL G	
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
11/21/2007		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/612,170	SAADAT ET AL.
	Examiner	Art Unit
	Michael G. Mendoza	3734

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 03 August 2007.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 26,27,29 and 62-77 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 69-72 and 74-77 is/are allowed.
- 6) Claim(s) 26,27,29,62-67 and 73 is/are rejected.
- 7) Claim(s) 68 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____.                                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____.                         |

## DETAILED ACTION

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 26, 27, 29, 62-68, and 73 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

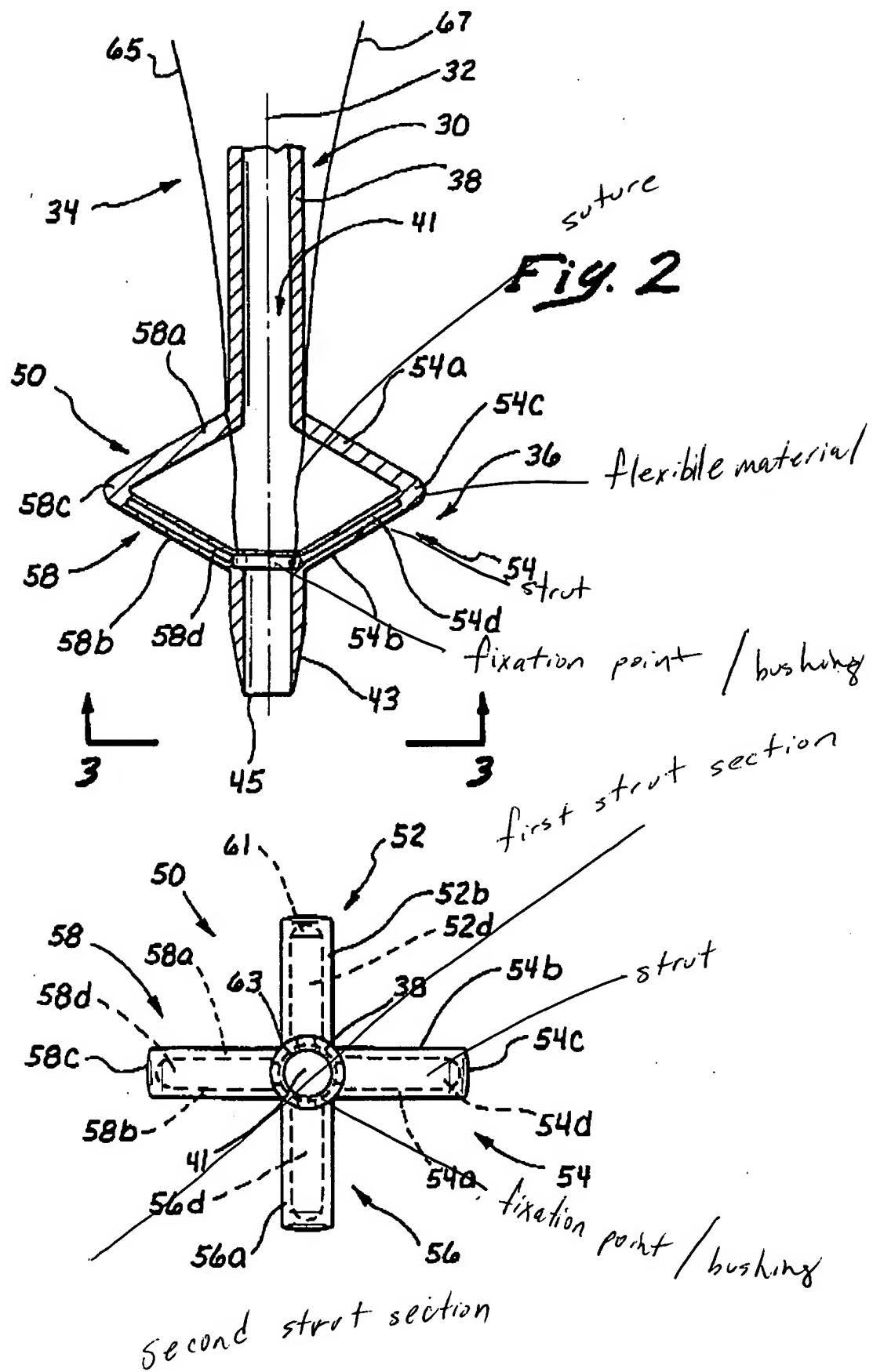
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

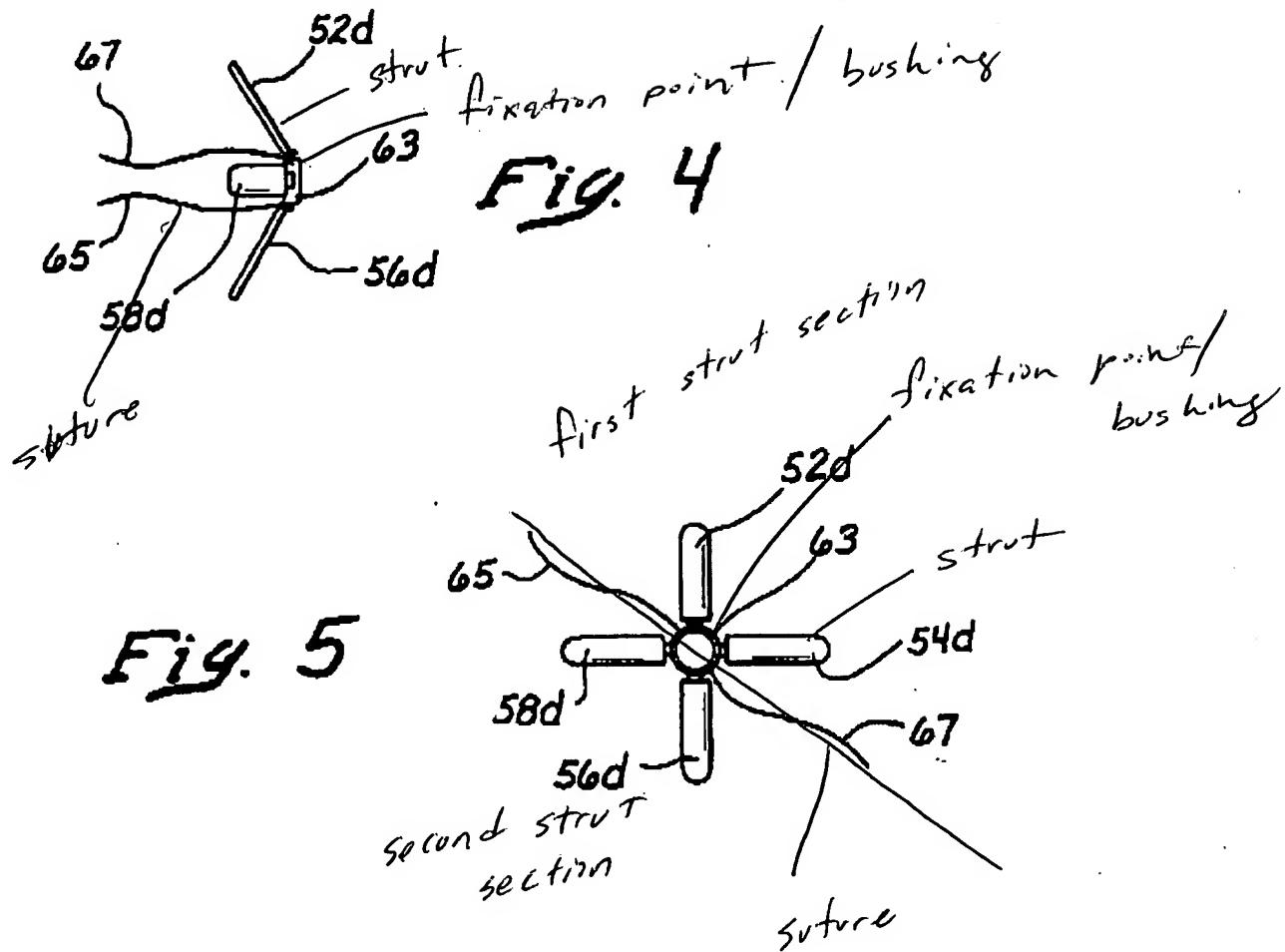
A person shall be entitled to a patent unless –

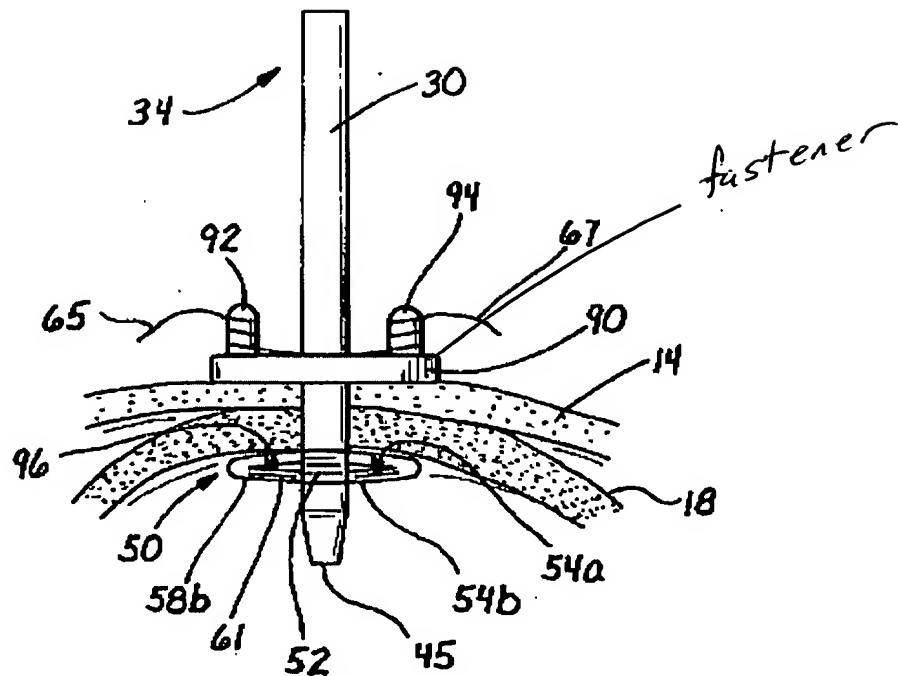
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 26, 27, 62, 64, 66, and 73 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor et al. 5935107.

4. Taylor et al. an anchor comprising: a plurality of struts, with substantially each one of the plurality of struts having a first end and a second end, with the second end of substantially each of the struts free, and the with the first end of substantially each struts affixed to a fixation point; a suture coupled to the fixation point, with the struts having a reduced delivery profile wherein they are substantially parallel to one another and a deployed profile where they extend at angles away from one another (figs. 7-10); and a fastener translatable coupled to the suture and configured to retain a tension force on the suture; wherein the fixation point comprises a bushing and the second end of each on to the plurality of struts is coupled to the distal bushing; wherein in the deployed profile the plurality of struts bow radially outward to form a disk-like configuration; a flexible material around the strut sections (54a-54d).







*Fig. 10*

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 63, 65, and 103 rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor et al.

7. As to claim 63, Taylor et al. discloses the claimed invention except for the suture passing through an eyelet. Taylor et al. does teach a suture attached the a fixture point

but doesn't not specifically teach that the suture attached by means of an eyelet. It is well know in the art of suturing that a suture is tied/secured by passing through an eyelet. Therefore it would have been obvious to provide an eyelet in the invention of Taylor et al. for a means for securing a suture.

8. As to claim 65, Taylor et al. fails to teach a round flexible material. However, it would have been obvious to make the flexible material round because the shape of the flexible material is a mere design choice and that any shape would perform equally well.

9. As to claim 103, Taylor et al. discloses the claimed invention except for a length of polymeric or metal wire as the strut. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use polymeric or metal wire as a strut, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin* 125 USPQ 416. The use of shape memory polymeric or metals is well known in the art of surgery for use in devices that are expandable.

#### ***Allowable Subject Matter***

10. Claims 69-72 and 74-77 are allowable over the prior art of record.

11. Claim 68 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER